IMPORTANT

CORESPONDENCE

ON THE SUBJECT OF

STATE INTERPOSITION,

BETWEEN

His Excellency GOV. HAMILTON,

AND

HON. JOHN C. CALHOUN,

Vice-President of the United States;

[Copied from the Pendleton Messenger of 15th Sept. 1832.]

CHARLESTON:

PRINTED AND SOLD BY A. E. MILLER,

No. 4, Broad-street.

1832.

[*Governor Hamilton to Hon. John C. Calhoun.*]

PENDLETON, JULY 31, 1832.

My Dear Sir,—In reading again, a few days since, your communication addressed, last summer, to the editor of the '*Pendleton Messenger*,' containing an exposition of the doctrine of the right of interposition, which belongs to a sovereign State in this Confederacy, to arrest an usurpation, on the part of the General Government, of powers not delegated to it, I felt satisfied, not only from a remark which you yourself make in that article, but from an obvious condensation of your argument, that there were still a variety of lights in which the truth and vital importance of this highly conservative principle to the liberties of the States were quite familiar to the reflections of your own mind, which have not suggested themselves even to those who are the most zealously devoted to the doctrines in question.

Your patience has been so heavily taxed by the late oppressive session of Congress (oppressive in every sense of the term) that I feel some scruple in placing you under the requisition which my request is about to impose; but if you could find leisure this summer, for my private satisfaction and information, to fill out your argument of the last year, by going somewhat more into detail both as to the principles and consequences of Nullification, you would add one more to the many obligations of friendship I owe you. As I shall be, during the residue of the summer, in Charleston, be pleased to direct to that place.

I remain, my dear sir, with great esteem, your's, faithfully and respecfully.

JAMES HAMILTON, Junior.

Hon. J. C. CALHOUN, *Vice-Prcsident of the United States.*

[*Hon. John C. Calhoun to Governor Hamilton.*]

FORT HILL, AUGUST 28, 1832.

My Dear Sir,—I have received your note of the 31st of July, requesting me to give you a fuller development of my views, than that contained in my address last summer, on the right of a State to defend her reserved powers against the encroachments of the General Government.

As fully occupied as my time is, were it doubly so, the quarter from which the request comes, with my deep conviction of the vital importance of the subject, would exact a compliance.

No one can be more sensible, than I am, that the address of last summer fell far short of exhausting the subject. It was, in fact, intended as a simple statement of my views. I felt that the independence and candour which ought to distinguish one occupying a high public station, imposed a duty on me to meet the call for my opinion, by a frank and full avowal of my sentiments, regardless of consequences. To fulfil this duty, and not to discuss the subject, was the object of the Address. But in making these preliminary remarks, I do not intend to prepare you to expect a full discussion on the present occasion. What I propose is to touch some of the more prominent points that have received less of the public attention, than their importance seems to me to demand.

Strange as the assertion may appear, it is nevertheless true, that the great difficulty in determining whether a State has the right to defend her reserved powers against the General Government, or, in fact, any right at all beyond those of a mere corporation, is to bring the public mind to realize plain historical facts, connected with the origin and formation of the Government. Till they are fully understood, it is impossible that a correct and just view can be taken of the subject. In this connection, the first and most important point is, to ascertain distinctly, who are the real authors of the Constitution of the United States—whose powers created it—whose voice clothed it with authority—and whose agent, the government it formed, in reality is. At this point, I commence the execution of the task which your request has imposed.

The formation and adoption of the Constitution are events so recent, and all the connected facts so fully attested, that it would seem impossible that there should be the least uncertainty in relation to them; and yet, judging by what is constantly heard and seen, there are few subjects on which the public opinion is more confused. The most indefinite expressions are habitually used in speaking of them. Sometimes it is said, that the Constitution was made by the States, and at others, as if in contradistinction, by the people, without distinguishing between the two very different meanings which may be attached to those general expressions; and this, not in ordinary conversation, but in grave discussions before deliberative bodies, and in judicial investigations, where the greatest accuracy, on so important a point might be expected; particularly, as one or the other meaning is intended, conclusions the most opposite must follow, not only in reference to the subject of this communication, but as to the nature and character of our political system. By a State, may be meant, either the government of a State, or the people, as forming a separate and independent community; and by the people, either the American people taken collectively, as forming one great community, or as the people of the several States, forming, as above stated, separate and independent communities. These distinctions are essential in the inquiry. If, by the people, be meant, the people collectively, and not the people of the several States taken separately; and, if it be true, indeed, that the Constitution is the work of the American people collectively—if it originated with them, and derives its authority from their will—then there is an end of the argument. The right, claimed for a State, of defending her reserved powers against the General Government, would be an absurdity. Viewing the American people collectively, as the source of political power, the rights of the States would be mere concessions—concessions from the common majority, and to be revoked by them with the same facility that they were granted. The States would, on this supposition, bear to the Union the same relation that counties do to the States; and it would, in that case, be just as preposterous to discuss the right of interposition on the part of a State against the General Government, as that of the counties against the States themselves. That a large portion of the people of the United States thus regard the relation between the States and the General Government, including many who call themselves the friends of State Rights and opponents of Consolidation, can scarcely be doubted, as it is only on that supposition it can be explained that so many of that description should denounce the doctrine for which the State contends, as so absurd. But, fortunately, the supposition is entirely destitute of truth. So far from the Constitution being the work of the American people collectively, no such political body, either now, or ever did exist. In that character the people of this country never performed a single political act—nor indeed can, without an entire revolution in all our political relations.

I challenge an instance. From the beginning, and in all the changes of political existence, through which we have passed, the people of the United States have been united as forming political communities, and not as indi-

viduals. Even in the first stage of existence they formed distinct colonies, independent of each other, and politically united only through the British crown. In their first informal union, for the purpose of resisting the encroachments of the mother country, they united as distinct political communities; and, passing from their colonial condition, in the act announcing their independence to the world, they declared themselves, by name and enumeration, free and independent States. In that character, they formed the old confederation; and, when it was proposed to supersede the articles of the confederation, by the present Constitution, they met in Convention *as States*, acted and voted *as States;* and the Constitution, when formed, was submitted for ratification to the people of the *several States;* it was ratified by them, *as States—each State for itself;* each, by its ratification, binding its own citizens; the parts thus separately binding themselves—and not the whole the parts; to which, if it be added, that is declared in the preamble of the Constitution to be ordained by the people *of the United States*, and in the article of ratification, when ratified, it is declared "*to be binding between the States so ratifying*," the conclusion is inevitable, that the Constitution is the work of the people of the *States*, considered as separate and independent political communities—that they are its authors—their power created it—their voice clothed it with authority—that the government it formed is, in reality, their agent—and that the union, of which it is the bond, is an union of States, and not of individuals. No one who regards his character for intelligence and truth, has ever ventured directly to deny facts so certain; but while they are too certain for denial, they are also too conclusive in favour of the rights of the States, for admission. The usual course has been adopted: to elude what can neither be denied nor admitted; and never has the device been more successfully practised. By confounding States with State Governments, and the people of the States with the American people collectively, things, as it regards the subject of this communication, totally dissimilar, as much so as a triangle and a square, facts, of themselves perfectly certain and plain, and which, when well understood, must lead to a correct conception of the subject, have been involved in obscurity and mystery.

I will next proceed to state some of the results, which necessarily follow, from the facts which have been established.

The first, and in reference to the subject of this communication, the most important is, that there is *no direct* and *immediate* connection between the individual citizens of a State and the General Government. The relation between them is through the State. The Union is an union of States, as communities, and not an union of individuals. As members of a State, her citizens were originally subject to no control, but that of the State; and could be subject to no other, except by the act of the State itself. The Constitution was accordingly submitted to the States for their separate ratification; and it was only by the ratification of the State that its citizens became subject to the control of the General Government. The ratification of any other, or all the other States, without its own, could create no connection between them and the General Government, nor impose on them the slightest obligation. Without the ratification of their own State, they would stand in the same relation to the General Government, as do the citizens and subjects of any foreign State; and we find the citizens of North-Carolina and Rhode-Island actually bearing that relation to the Government for some time after it went into operation; these States having, in the first instance, declined to ratify. Nor had the act of any individual the least influence in subjecting him to the control of the General Government, except as it might influence the ratification of the Constitution by his own State. Whether subject to its control, or not, depended wholly on the act of the State. His dissent had not the least weight against the assent of his State—nor his assent against its dissent. It follows,

as a necessary consequence, that the act of ratification bound the State, as a community, as is expressly declared in the article of ratification above quoted, and not the citizens of the State, as individuals; the latter being bound through their State, and in consequence of the ratification of the former. Another, and a highly important consequence, as it regards the subject under investigation, follows with equal certainty; that on a question, whether a particular power, exercised by the General Government, be granted by the Constitution, it belongs to the State, as a member of the Union, in her sovereign capacity, in Convention, to determine definitively, as far as her citizens are concerned, the extent of the obligation which she contracted; and if, in her opinion, the act exercising the power be unconstitutional, to declare it null and void, *which declaration would be obligatory on her citizens.* In coming to this conclusion, it may be proper to remark, to prevent misrepresentation, that I do not claim for a State the right to abrogate an act of the General Government. It is the Constitution that annuls an unconstitutional act. Such an act is, of itself, void and of no effect. What I claim is, the right of the State, *as far as its citizens are concerned, to declare the extent of the obligation, and that such declaration is binding on them*—a right, when limited to its citizens, flowing directly from the relation of the State to the General Government, on the one side, and its citizens on the other, as already explained, and resting on the most plain and solid reasons.

Passing over, what of itself might be considered conclusive, the obvious principle, that it belongs to the authority, which imposed the obligations to declare its extent, so far as those are concerned on whom the obligation is placed. I shall present a single argument which, of itself, is decisive. I have already shewn, that there is no *immediate* connection between the citizens of a State and the General Government; and, that the relation between them, is through the State. I have also shewn, that whatever obligations were imposed on the citizens, were imposed by the declaration of the State, ratifying the Constitution. A similar declaration, by the same authority, made with equal solemnity, declaring the extent of the obligation, must, as far as they are concerned, be of equal authority. I speak, of course, on the supposition, that the right has not been transferred, as it will hereafter be shewn, that it has not. A citizen would have no more right to question the one, than he would have, the other declaration. They rest on the same authority; and as he was bound by the declaration of his State assenting to the Constitution, whether he assented or dissented, so would he be equally bound, by a declaration defining the extent of that assent, whether opposed to, or in favour of such declaration. In this conclusion, I am supported by analogy. The case of a treaty between sovereigns is strictly analogous. There, as in this case, the State contracts for the citizen, or subject;—there, as in this, the obligation is imposed by the State; and is independent of his will; and there, as in this, the declaration of the State, determining the extent of the obligation contracted, *is obligatory on him*, as much so, as the treaty itself.

Having now, I trust, established the very important point, that the declaration of a State, as to the extent of the power granted, is obligatory on its citizens, I shall next proceed to consider the effects of such declarations, in reference to the General Government; a question which necessarily involves the consideration of the relation between it and the States. It has been shewn, that the people of the States, acting as distinct and independent communities, are the authors of the Constitution, and that the General Government was organized and ordained by them to execute its powers. The Government then, with all of its Departments, is in fact the agent of the States, constituted to execute their joint will, as expressed in the Constitution.

In using the term agent, I do not intend to derogate, in any degree, from its character as a Government. It is as truly and properly a Government, as

are the State Governments themselves. I have applied it, simply because it strictly belongs to the relation between the General Government and the States, as, in fact, it does also, to that between a State and its own government. Indeed, according to our theory, Governments are, in their nature, but trusts, and those appointed to administer them, trustees, or agents to execute the trust powers. The sovereignty resides elsewhere; in the people; not in the Government; and with us, *the people* mean *the people of the several States* originally formed into thirteen distinct and independent communities, and now into twenty-four. Politically speaking, in reference to our own system, there are no *other people*. The General Government, as well as those of the States, is but the organ of their power; the latter, that of their respective States, through which is exercised separately that portion of power not delegated by the Constitution, and in the exercise of which, each State has a local and peculiar interest; the former, the joint organ of all the States confederated into one general community, and through which they jointly and concurringly exercise the delegated powers, in which all have a common interest. Thus viewed, the Constitution of the United States, with the Government which it created, is truly and strictly, the Constitution of each State, as much so, as its own particular Constitution and Government, ratified by the same authority, in the same mode, and having, as far as its citizens are concerned, its powers and obligations from the same source, differing only in the aspect, under which I am considering the subject, in the *plighted faith* of the State to its co-States, and of which, as far as its citizens are considered, the State, in the last resort, is the exclusive judge.

Such, then, is the relation between the State and General Government, in whatever light we may consider the Constitution, whether as a compact between the States, or of the nature of a legislative enactment by the joint and concurring authority of the States, in their high sovereignty. In whatever light it may be viewed, I hold it as necessarily resulting, that in the case of a power disputed between them, the Government, as the agent, has no right to enforce its construction against the construction of the State, as one of the sovereign parties to the Constitution, any more, than the State Government would have, against the people of the State, in their sovereign capacity, the relation being the same between them. That such would be the case, between agent and principal, in the ordinary transactions of life, no one will doubt, nor will it be possible to assign a reason, why it is not as applicable to the case of government as to that of individuals. The principle in fact, springs from the *relation itself* and *is applicable to it in all its forms and characters*. It may, however, be proper to notice a distinction between the case of a single principal and his agent, and that of several principals and their joint agent, which might otherwise cause some confusion. In both cases, as between the agent and a principal, the construction of the principal, whether he be a single principal, or one of several, is equally conclusive; but, in the latter case, both the principal and the agent bear relation to the other principals, which must be taken into the estimate, in order to understand fully all the results, which may grow out of the contest for power between them. Though the construction of the principal is conclusive against the joint agent, as between them, such is not the case between him and his associates. They both have an equal right of construction, and it would be the duty of the agent to bring the subject before the principals to be adjusted, according to the terms of the instrument of association, and of the principal to submit to such adjustment. In such cases, the contract itself is the law, which must determine the relative rights and powers of the parties to it. The General Government is a case of joint agency—the joint agent of the twenty-four sovereign States. It would be its duty, according to the principles established, in such cases, instead of attempting to enforce its construc-

tion, of its powers, against that of the States, to bring the subject before the States themselves, in the only form, which according to the provision of the Constitution it can be, by a proposition to amend, in the manner prescribed in the instrument, to be acted on by them in the only mode they can rightfully pursue, by expressly granting, or withholding the contested power. Against this conclusion there can be raised but one objection, that the States have surrendered, or transferred the right in question If such be the fact, there ought to be no difficulty in establishing it. The grant of the powers delegated is contained in a written instrument, drawn up with great care, and adopted with the utmost deliberation. It provides, that the powers not granted, are reserved to the States and the people. If it be surrendered, or transferred, let then the grant be shewn, and the controversy terminated, and surely, it ought to be shewn, plainly and clearly shewn, before the States are asked to admit what, if true, would not only divest them of a right, which, under all its forms, belongs to the principal over his agent, unless surrendered, but which cannot be surrendered, without in effect, and for all practical purposes, reversing the relation between them; putting the agent in the place of the principal, and the principal in that of the agent; and which would degrade the States, from the high and sovereign condition, which they have ever held, under every form of their existance, to be mere subordinate and dependant corporations But instead of shewing any such grant, not a provision can be found in the Constitution, *authorizing the General Government to exercise any control whatever over a State* by force, by veto, by judicial process, or in any other form—*a most important omission, intended, and not accidental;* and as will be shewn in the course of these remarks, omitted by the dictates of the profoundest wisdom.

The journal and proceedings of the Convention, which formed the Constitution, afford abundant proof, that there was in that body a powerful party, distinguished for talents and influence, intent on obtaining for the General Government, a grant of the very power in question, and that they attempted to effect this object, in all possible ways, but fortunately without success. The first project of a Constitution submitted to the Convention (Gov. Randolph's) embraced a proposition to grant power, "to negative all laws contrary, in the opinion of the National Legislature, to the articles of the Union, or any treaty subsisting under the authority of the Union; and to call forth the force of the Union against any member of the Union failing to fulfil its duty under the articles thereof." The next project submitted (Charles Pinckney's) contained a similar provision. It proposed, "that the Legislature of the United States should have the power to revise the laws of the several States, that may be supposed to infringe the powers exclusively delegated by this Constitution to Congress, and to negative and annul such as do." The next was submitted by Mr. Paterson of New Jersey, which provided, "if any State, or body of men in any state, shall oppose or prevent the carrying into execution such acts or treaties" (of the Union) "the federal executive shall be authorized to call forth the powers of the confederated States, or so much thereof, as shall be necessary to enforce, or compel the obedience to such acts, or observance of such treaties." Gen. Hamilton's followed next, which provided, that "all laws of the particular States contrary to the Constitution, or laws of the United States, to be utterly void: and the better to prevent such laws being passsed, the Govenor, or President of each State shall be appointed by the General Government: and shall have a negative on the laws about to be passed, in the State of which he is Govenor, or President."

At a subsequent period, a proposition was moved and referred to a Committee, to provide, that "the jurisdiction of the Supreme Court shall extend to all controversies between the United States, and an individual state;" and,

at a still later period, it was moved to grant power "to negative all laws passed by the several states, interfering in the opinion of the Legislature, with the general harmony and interest of the Union, provided, that two thirds of the members of each house assent to the same;" which after an effectual attempt to commit was withdrawn.

I do not deem it necessary to trace through the Journals of the Convention the fate of these various propositions. It is sufficient that they were moved and failed to prove conclusively, in a manner never to be obliterated, that the Convention, which framed the Constitution, was opposed to granting the power to the General Government, in any form, through any of its Departments, legislative, executive or judicial, to coerce or control a State, though proposed in all conceivable modes, and sustained by the most talented and influential members of the body. This, one would suppose, ought to settle forever the question of the surrenderer, or transfer of the power, under consideration: and such in fact would be the case, were the opinion of a large portion of the community not biassed as in fact it is, by interest. A majority have a direct interest in enlarging the powers of the Government, and the interested adhere to power with a pertinacity which bids defiance to truth, though sustained by evidence, as conclusive as mathematical demonstration; and accordingly, the advocates of the powers of the General Government, notwithstanding the impregnable strength of the proof to the contrary, have boldly claimed on construction, a power, the grant of which was so perseveringly sought, and so sternly resisted by the Convention. They rest the claim on the provisions in the Constitution, which declare, "that this Constitution and the laws made in pursuance thereof, shall be the supreme law of the land," and that, "the judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

I do not propose to go into a minute examination of these provisions.—They have been so frequently and so ably investigated, and it has been so clearly shewn that they do not warrant the assumption of the power claimed for the Government, that I do not deem it necessary. I shall therefore confine myself to a few detached remarks.

I have already stated, that a distinct proposition was made to confer the very power in controversy on the Supreme court, which failed; which, of itself ought to overrule the assumption of the power by construction, unless sustained by the most conclusive arguments; but when it is added that this proposition was moved (20th August) subsequent to the period of adopting the provisions, above cited, vesting the court with its present powers, (18th July) and that, an effort was made, at a still later period (23 August) to invest Congress with a negative on all state laws, which, in its opinion, might interfere with the general interest and harmony of the Union, the argument would seem too conclusive against the powers of the court, to be overruled by construction, however strong.

Passing by, however, this, and also the objection, that the terms *cases in law and equity* are technical, embracing only questions between parties, amenable to the process of the court, and, of course, excluding questions between the States and the General Government; an argument which has never been answered; there remains another objection perfectly conclusive.

The construction, which would confer on the Supreme court the power in question, rests on the ground, that the constitution has conferred on that tribunal the high and important right of deciding on the *constitutionality of laws*. That it possesses this power, I do not deny, but I do utterly, that it is *conferred by the Constitution*, either by the provisions above cited, or any other. It is a power, derived not from the Constitution, but from the neces-

sity of the case; and so far from being possessed by the Supreme court, exclusively, or peculiarly, it not only belongs to every court of the country, high or low, civil or criminal, but to all foreign courts, before which a case may be brought, involving the construction of a law which may conflict with the provisions of the Constitution. The reason is plain. Where there are two sets of rules prescribed, in reference to the same subject, one by a higher, and the other by an inferior authority, the judicial tribunal called in to decide on the case must unavoidably determine, should they conflict, which is the law; and that necessity compels it to decide, that the rule prescribed by the inferior power, if, in its opinion, inconsistent with that of the higher, is void; be the conflict between the constitution and a law, or between a charter, and the by-laws of a corporation. The principle, and source of authority are the same in both cases. Being derived from necessity, it is restricted within its limits, and cannot pass an inch beyond its narrow confines of deciding in a case before the court, and of course, between parties amenable to its process, excluding thereby political questions, which of the two is in reality, the law, the act of Congress, or the Constitution, when, on their face, they are inconsistent; and yet, from this resulting, limited power derived from necessity, and held in common with every court in the world, which by possibility may take cognizance of a case involving the interpretation of our Constitution and laws, it is attempted to confer on the Supreme Court, a power, which would work a thorough and radical change in our system; and which power was positively refused by the Convention.

The opinion, that the General Government has the right to enforce its construction of its powers against a State, in any mode whatever is, in truth, founded on a misconception of our system. At the bottom of this, and in fact, almost every other misconception, as to the relation between the States and the General Government, lurks the radical error, that the latter is a national, and not as in reality it is a Confederated Government; and that it derives its powers from a higher source than the States. There are thousands influenced by these impressions, without being conscious of it, and who, while they believe themselves to be opposed to consolidation, have infused into their conception of our Constitution, almost all the ingredients, which enter into that form of Government. The striking difference between the present Government, and that under the old confederation (I speak of Governments, as distinct from constitutions) has mainly contributed to this dangerous impression. But, however disimilar their Governments, the present Constitution is as far removed from consolidation, and is as strictly, and as purely a *confederation*, as the one which it superseded.

Like the Old Confederation, it was formed and ratified by State authority. The only difference in this particular is, that one was ratified by the people of the States, the other by the State Governments; one forming more strictly an Union of the State Governments, the other of the States themselves; one of the agents exercising the powers of Sovereignty, and the other of the Sovereigns themselves; but both were Unions of Political bodies, as distinct from an Union of the people individually. They are, indeed, *both confederations;* but the present in a higher and purer sense, than that which it succeeded; just as the act of a sovereign, is higher and more perfect, than that of his agent; and it was, doubtless, in reference to this difference, that the preamble of the Constitution, and the address of the Convention, laying the Constitution before Congress, speak of consolidating and *perfecting* the Union; yet this difference, which while it elevated the General Government, in relation to the State Governments, placed it more immediately in the relation of the *creature and agent* of the States themselves, by a natural misconception, has been the principal cause of the impression so prevalent—of the inferiority of the States to the General Government, and of the consequent

right of the latter to coerce the former. Raised from below the State Governments, it was conceived to be placed above the States themselves.

I have now, I trust, conclusively shown, that a State has a right, in her sovereign capacity, in Convention, to declare an unconstitutional act of Congress to be null and void, and that such declaration would be obligatory on her citizens, as highly so as the constitution itself, and conclusive against the General Government, which would have no right to enforce its construction of its powers against that of the State.

I next propose to consider the practical effect of the exercise of this high and important right, which, as the great conservative principle of our system, is known under the various names of Nullification, Interposition, and State Veto, in reference to its operation, viewed under different aspects.—Nullification, as annulling an unconstitutional act of the General Government, as far as the State is concerned; Interposition, as throwing the shield of protection between the citizens of a State, and the encroachments of the Government; and Veto, as arresting or inhibiting its unauthorised acts within the limits of the State.

The practical effect, could the right be considered as one fully recognized, would be plain and simple, and has already in a great measure been anticipated. If the State has a right, there must of necessity be a corresponding obligation on the part of the General Government, to acquiesce in its exercise; and of course it would be its duty to abandon the power, at least as far as the State is concerned, and to apply to the States themselves, according to the form prescribed in the Constitution, to obtain it by a grant. If granted, acquiescence then would be a duty on the part of the State, and in that event, the contest would terminate in converting a doubtful constructive power, into one positively granted; but should it not be granted, no alternative would remain for the General Government but its permanent abandonment. In either event, the controversy would be closed, and the Constitution fixed; a result of the utmost importance to the steady operation of the Government, and the stability of the system, and which can never be attained under its present operation, without the recognition of the right, as experience has shewn.

From the adoption of the Constitution, we have had but one continued agitation of constitutional questions, embracing some of the most important powers exercised by the Government; and yet, in spite of all the ability and force of argument displayed in the various discussions, backed by the high authority claimed for the Supreme Court, to adjust such controversies, not a single constitutional question, of a political character, which has ever been agitated, during this long period, has been settled, in the public opinion, except that of the unconstitutionality of the Alien and Sedition Law; and, what is remarkable, that was settled *against the decision of the Supreme Court.* The tendency is to increase, and not diminish this conflict for power. New questions are yearly added, without diminishing the old, while the contest becomes more obstinate as the list increases; and, what is highly ominous more sectional. It is impossible that the Government can last, under this increasing diversity of opinion, and growing uncertainty, as to its power, in relation to the most important subjects of legislation; and equally so, that this dangerous state can terminate, without a power somewhere to compel, in effect, the Government to abandon doubtful constructive powers, or to convert them into positive grants, by an amendment of the Constitution; in a word, to substitute the positive grants of the parties themselves, for the constructive powers interpolated by the agents. Nothing short of this, in a system constructed as ours is, with a double set of agents, one for local, and the other for general purposes, can ever terminate the conflict for power, or give uniformity and stability to its action.

Such would be the practical and happy operation were *the right recognized;* but the case may be far otherwise; and as the right is not only denied, but violently opposed the General Government, so far from acquiescing in its exercise, and abandoning the power, as it ought, may endeavor, by all the means within its command, to enforce its construction against that of the State. It is under this aspect of the question, that I now propose to consider the practical effect of the exercise of the right with the view to determine, which of the two, the State or the General Government, must prevail in the conflict; which compels me to revert to some of the grounds already established.

I have already shewn, that the declaration of Nullification would be obligatory on the citizens of the State, as much so in fact, as its declaration ratifying the Constitution, resting as it does, on the same basis. It would *to them* be the highest possible evidence, that the power contested was not granted, and, of course, that the act of the General Government was unconstitutional. They would be bound, in all the relations of life, private and political, to respect and obey it; and, when called upon, as Jurymen, to render their verdict accordingly, or as Judges, to pronounce judgment in conformity to it. The right of Jury trial is secured by the Constitution (thanks to the jealous spirit of liberty doubly secured and fortified) and with this inestimable right—inestimable, not only as an essential portion of the judicial tribunals of the country, but infinitely more so, considered as a popular, and still more, a local representation, in that department of the Government, which, without it, would be the farthest removed from the control of the people; and a fit instrument to sap the foundation of the system; with, I repeat, this inestimable right, it would be impossible for the general government, within the limits of the State, to execute, legally, the act nullified, or any other, passed with a view to enforce it; while on the other hand, the State would be able to enforce, legally and peaceably, its declaration of Nullification. Sustained by its Court and Juries, it would calmly and quietly, but successfully, meet every effort of the General Government to enforce its claim of power. The result would be inevitable. Before the judicial tribunals of the country, the State must prevail; unless, indeed, Jury trial could be eluded, by the refinements of the court, or by some other device; which, however, guarded as it is by the ramparts of the Constitution, would, I hold, be impossible. The attempt to elude, should it be made, would itself be unconstitutional; and, in turn, would be annulled by the sovereign voice of the State. Nor would the right of appeal to the Supreme Court, under the Judiciary act, avail the General Government. If taken, it would but end in a new trial, and that, in another verdict against the government; but whether it may be taken, would be optional with the State. The Court itself has decided, that a copy of the record is requisite to review a Judgment of a State Court; and, if necessary, the State would take the precaution to prevent, by proper enactments, any means of obtaining a copy. But if obtained, what would it avail, against the execution of the penal enactments of the State, intended to enforce the declaration of Nullification? The Judgement of the State Court would be pronounced and executed, before the possibilty of a reversal; and executed too, without responsibility incurred by any one.

Beaten before the courts, the General Government would be compelled to abandon its unconstitutional pretensions, or resort to force—a resort, the difficulty (I was about to say, the impossibility) of which, would very soon fully manifest itself, should folly, or madness, ever make the attempt.

In considering this aspect of the controversy, I pass over the fact, that the General Government has no right to resort to force against a state—to coerce a sovereign member of the Union—which, I trust, I have established beyond

all possible doubt. Let it, however, be determined to use force, and the difficulty would be insurmountable, unless, indeed, it be also determined to set aside the Constitution, and to subvert the system to its foundations.

Against whom would it be applied? Congress has, it is true, the right to call forth the militia, "to execute the laws, and suppress insurrections;" but there would be no law resisted, unless, indeed, it be called resistance for the juries to refuse to find, and the courts to render judgment, in conformity to the wishes of the General Government; no insurrection to suppress; no armed force to reduce; not a sword unsheathed; not a bayonet raised; none, absolutely none, on whom force could be used; except it be on the unarmed citizens engaged peaceably and quietly, in their daily occupations.

No one would be guilty of treason, ("levying war against the United States, adhering to their enemies; giving them aid and comfort,") or any other crime, made penal by the Constitution, or the laws of the United States.

To suppose that force could be called in, implies, indeed, a great mistake, both as to the nature of our Government and that of the controversy. It would be a legal and constitutional contest, a conflict of moral, and not physical force—a trial of constitutional, not military power, to be decided before the judicial tribunals of the country, and not on the field of battle. In such contest, there would be no object for force, but those peaceful tribunals—nothing on which it could be employed, but in putting down courts and juries, and preventing the execution of judicial process. Leave these untouched, and all the militia that could be called forth, backed by a regular force of ten times the number of our small but gallant and patriotic army, could not have the slightest effect on the result of the controversy; but subvert these by an armed body, and you subvert the very foundation of this, our free, constitutional and legal system of government, and rear in its place a military despotism.

Feeling the force of these difficulties, it is proposed with the view, I suppose, of disembarrassing the operation as much as possible of the troublesome interference of courts and juries, to change the scene of coercion from land to water, as if the Government could have one particle more right to coerce a state by water than by land; but unless I am greatly deceived, the difficulty on that element will not be much less than on the other. The jury trial, at least the local jury, (the trial by the vicinage) may indeed, be evaded there; but, in its place, other and not much less formidable obstacles must be encountered.

There can be but two modes of coercion resorted to by water, blockade, and abolition of the ports of entry of the State, accompanied by penal enactments, authorising seizures for entering the waters of the State. If the former be attempted, there will be other parties, besides the General Government and the State. Blockade is a belligerent right. It presupposes a state of war, and, unless there be war (war in due form, as prescribed by the Constitution.) the order for blockade would not be respected by other nations, or their subjects. Their vessels would proceed directly for the blockaded port, with certain prospects of gain; if seized under the order of blockade, through the claim of indemnity against the General Government; and, if not, by a profitable market without the exaction of duties.

The other mode, the abolition of the ports of entry of the States, would also have its difficulties. The Constitution provides that "no preference shall be given by any regulation of commerce, or revenue, to the ports of one State, over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another;" provisions too clear to be eluded even by the force of construction. There will be another difficulty. If seizures be made in port or within the distance assigned by the laws of nations, as the limits of a State, the trial must be in the State,

with all the embarrassments of its courts and juries while beyond the ports and the distance to which I have referred, it would be difficult to point out any principle by which a foreign vessel at least, could be seized, except as an incident to the right of blockade, and of course, with all the difficulties belonging to that mode of coercion.

But, there yet remains another, and, I doubt not, insuperable barrier, to be found in the Judicial tribunals of the Union, against all the schemes of introducing force, whether by land or water.—Though I cannot concur in the opinion of those who regard the Supreme Court as the mediator, appointed by the Constitution, between the States and the General Government; and though I cannot doubt there is a natural bias on its part, towards the powers of the latter, yet I must greatly lower my opinion of that high and important tribunal, for intelligence, justice and attachment to the Constitution, and particularly of that pure and upright Magistrate, who has so long, and with such distinguished honor to himself and the Union, presided over its deliberations, with all the weight that belongs to an intellect of the first order, united with the most spotless integrity, to believe for a moment, that an attempt, so plainly and manifestly unconstitutional, as a resort to force would be, in such a contest, could be sustained by the sanction of its authority. In whatever form force may be used, it must present questions for legal adjudiciation. If in the shape of blockade, the vessels seized under it, must be condemned, and thus would be presented the question of prize or no prize, and, with it, the legality of the blockade; if, in that of a repeal of the acts, establishing ports of entries in the State, the legality of the seizure must be determined, and that would bring up the question of the constitutionality of giving a preference to the ports of one State over those of another; and, so, if we pass from water to land, we will find every attempt there, to substitute force for law, must in like manner, come under the review of the Courts of the Union, and the unconstitutionality would be so glaring, that the Executive and Legislative Departments, in their attempt to coerce, should either make an attempt, so lawless and desperate, would be without the support of the Judicial Department. I will not pursue the question farther, as I hold it perfectly clear, that so long as a State retains its Federal relations, so long, in a word, as it continues a member of the Union the contest between it and the General Government must be before the Courts and Juries, and every attempt, in whatever form, whether by land, or water, to substitute force as the arbiter, in their place, must fail. The unconstitutionality of the attempt would be so open and palpable, that it would be impossible to sustain it.

There is indeed one view, and one only of the contest, in which force could be employed; but that view, as between the parties, would supersede the Constitution itself; that Nullification is secession, and would, consequently, place the State, as to the others, in the relation of a foreign State. Such clearly would be the effect of secession; but it is equally clear, that it would place the State beyond the pale of all her Federal relations, and, thereby, all control on the part of the other States over her. She would stand to them simply in the relation of a foreign State, divested of all Federal connection, and having none other between them, but those belonging to the laws of nations. Standing thus towards one another, force might indeed be employed against a State, but it must be a belligerent force, preceded by a declaration of war, and carried on with all its formalities. Such would be the certain effect of secession; and if Nullification be Secession—if it be but a different name for the same thing—such too, must be its effect; which presents the highly important question, are they, in fact the same, on the decision of which, depends the question, whether it be a *peaceable* and *constitutional* remedy, that may be exercised without *terminating* the *Federal* relations of the State, *or not*.

I am aware, that there is a considerable, and respectable portion of our State, with a very large portion of the Union, constituting in fact, a great majority, who are of the opinion, that they are the same thing, differing only in name; and who, under that impression, denounce it, as the most dangerous of all doctrines; and yet, so far from being the same, they are, unless indeed I am greatly deceived, not only perfectly distinguishable, but totally dissimilar in their nature, their object, and effect; and that, so far from deserving the denunciation, so properly belonging to the act, with which it is confounded, it is, in truth, the highest and most precious of all the rights of the States, and essential to preserve that very Union, for the supposed effect of destroying which, it is so bitterly anathematized.

I shall now proceed to make good my assertion of their *total dissimilarity*.

First, they are wholly dissimilar in their nature. *One has reference to the parties themselves, and the other to their agents.* Secession is a *withdrawal from the Union;* a separation from *partners*, and, as far as depends on the member withdrawing, a *dissolution* of the partnership. It presupposes an association; a Union of several States, or individuals, for a common object. Wherever these exist, Secession may; and where they do not, it cannot. Nullification on the contrary, *presupposes the relation of principal and agent;* the one granting a power to be executed, the other, appointed by him, with authority to execute it; *and is simply a declaration on the part of the principal, made in due form, that an act of the agent, transcending his power is null and void.* It is a right belonging exclusively to the relation between principal and agent, to be found *wherever it exists*, and *in all its forms*, between several, or an association of principals, and their joint agents, as well as between a single principal and his agent.

The difference in their object is no less striking than in their nature.

The object of Secession is *to free* the withdrawing member from the *obligation* of the association, or union; and is applicable to cases, where the intention of the association, or union *has failed*, either by an abuse of power on the part of *its members*, or other causes. Its *direct and immediate object, as it concerns the withdrawing member, is the dissolution of the association or union.* On the contrary the object of Nullification is to confine the agent within the limits of his powers, by arresting his acts, transcending them; *not with the view of destroying the delegated or trust power, but to preserve it, by compelling the agent to fulfil the object for which the agency, or trust was created; and is applicable only to cases where the trust or delegated powers are transcended on the part of the agent.* Without the power of Secession, an association, or union, formed for the common good *of all* the members, might prove ruinous to some, by the abuse of power, on the part of the others; and without Nullification, the agent might under colour of construction, assume a power never intended to be delegated, or to convert those delegated, to objects never intended to be comprehended in the trust, to the ruin of the principal, or, in case of a joint agency, to the ruin of some of the principals. Each has thus, its appropriate object; but objects in their nature, very dissimilar; so much so, that in case of an association or union, where the powers are delegated to be executed by an agent, the abuse of power, on the part of the *agent* to the injury of one or more of the members, would not justify Secession, on their part. The rightful remedy in that case would be Nullification. There would be neither right, nor pretext to secede; not right, because secession is applicable only to the acts of the members of the association or union, and not to the act of the agent: nor pretext, because there is another, and equally efficient remedy, short of the dissolution of the association or union, which can only be justified by necessity. Nullification may, indeed, be succeeded by Secession. In the case stated should the other members undertake to grant the power nullified, and should the nature of the power be such as to *defeat the object of the association or union*, at least, as far as the member nullifying

is concerned, it would then become an abuse of power on the part of the principals: and thus present a case, where secession would apply; but in no other, could it be justified, except it be for a failure of the association or union, to effect the object for which it was created, independent of any abuse of power.

It now remains to shew, that their effect is as dissimilar, as their nature, or object.

Nullification leaves the members of the association, or union, in the condition it found them, subject to all its burdens, and entitled to all its advantages, comprehending the member nullifying, as well as the others; its object being, not to destroy, but to preserve, as has been stated. It simply arrests the act of the agent, as far as the principal is concerned, leaving in every other respect, the operation of the joint concern, as before; Secession on the contrary, destroys, as far as the withdrawing member is concerned, the association, or union, and restores him to the relation he occupied towards the other members before the existence of the association or union. He loses the benefit, but is released from the burden and control; and can no longer be dealt with by his former associates, as one of its members.

Such are clearly the differences between them—differences so marked, that instead of being identified, as supposed, they form a contrast, in all the aspects in which they can be regarded. The application of these remarks to the political association, or Union of these twenty-four States, and the General Government, their joint agent, is too obvious, after what has been already said, to require any additional illustration; and I will dismiss this part of the subject, with a single additional remark.

There are many, who acknowledge the right of a State to secede, but deny its right to nullify; and yet, it seems impossible to admit the one, without admitting the other. They both presuppose the same structure of the Government, that it is a union of the States as forming political communities, the same right on the part of the States, as members of the Union, to determine for her citizens, the extent of the powers delegated and those reserved, and, of course, to decide whether the constitution has or has not, been violated. The simple difference then, between those who admit Secession, and deny Nullification, and those who admit both, is, that one acknowledges, that the declaration of a State, pronouncing that the Constitution has been violated, and is therefore, null and void, would be obligatory on her citizens, and would arrest all the acts of the Government, within the limits of the State; while they deny that a similar declaration, made by the same authority, and in the same manner, that an act of the Government has transcended its powers, and that it is, therefore, null and void, would have any obligation, while the other acknowledges the obligation in both cases. The one admits that the declaration of a State assenting to the Constitution bound her citizens, and that her declaration can unbind them; but denies, that a similar declaration, as to the extent, she has in fact bound them, has any obligatory force on them; while the other gives equal force to the declaration in the several cases. The one denies the obligation, where the object is to *preserve the Union in the only way it can be*, by confining the Government, formed to execute the trust powers, strictly within their limits, and to the objects, for which they were delegated, though they give *full* force, where the object is *to destroy the Union itself;* while the other, in giving equal weight to both, *prefers the one because it preserves*, and *rejects the other because it destroys;* and yet, the former is the *Union;* and the latter the *Disunion party!* And all this strange distinction originates as far as I can judge, in attributing to Nullification, what belongs exclusively to Secession. The difficulty, as to the former, it seems is, that a State cannot be in and out of the Union at the same time.

This is, indeed, true, if applied to Secession—the throwing off *the authority of the Union itself*. To nullify the Constitution, if I may be pardoned the solecism, would indeed be tantamount to disunion; and as applied to such an act, it would be true that a State could not be in and out of the Union at the same time; but the act would be Secession.

But to apply it to Nullification, properly understood, the object of which, instead of resisting or diminishing the powers of the Union, is to preserve them as they are, neither increased nor diminished, and thereby the Union itself (for the Union may be as effectually destroyed by increasing as by diminishing its powers—by Consolidation as by disunion itself) would be, I would say, had I not great respect for many who do thus apply it, egregious trifling with a grave and deeply important constitutional subject.

I might here finish the task which your request imposed; having, I trust, demonstrated, beyond the power of refutation, that a State has the right to defend her reserved powers, against the encroachments of the General Government; and, I may add, that the right is in its nature peaceable, consistent with the federal relations of the State, and perfectly efficient, whether contested in the Courts, or attempted to be resisted by force. But there is another aspect of the subject, not yet touched, without adverting to which, it is impossible to understand the full effects of Nullification, or the real character of our political institutions; I allude to the power which the States, as a confederated body, have acquired directly over each other; and on which I will now proceed to make some remarks, though I fear at the hazard of fatiguing you.

Previous to the adoption of the present Constitution, no power could be exercised over any State, by any other, or all of the States, without its own consent; and we, accordingly, find, that the old Confederation and the present Constitution were both submitted for ratification to each of the States, and that each ratified for itself, and was bound only in consequence of its own particular ratification, as has been already stated. The present Constitution has made in this particular, a most important modification in their condition. I allude to the provision which gives validity to amendments of the Constitution, when ratified by three-fourths of the States—a provision which has not attracted as much attention as it importance deserves. Without it, no change could have been made in the Constitution, unless with the unanimous consent of all the States, in like manner as it was adopted. This provision, then, contains a highly important concession, by each to all of the States, of a portion of the original and inherent right of self-government, possessed, previously by each separately, in favour of their general confederated powers, giving, thereby, increased energy to the States in their united capacity, and weakening them in the same degree in their separate. Its object was to facilitate and strengthen the action of the amending, or (to speak a little more appropriately as it regards the point under consideration) *the repairing power*. It was foreseen, that experience would probably disclose errors in the Constitution itself—that time would make great changes in the condition of the country, which would require corresponding changes in the Constitution—that the irregular and conflicting movements of the bodies, composing so complex a system, might cause derangements requiring correction—and that to require the unanimous consent of all the States to meet these various contingences, would be placing the whole too much under the control of the parts; to remedy which, this great additional power was given to the amending or repairing power—this *vis medicatrix* of the system.

To understand, correctly, the nature of this concession, we must not confound it with the delegated powers, conferred on the General Government, and to be exercised by it, as the joint agents of the States. They are essentially different. The former is, in fact, but a modification of the original sovereign

power, residing in the people of the several States—of *the creating or Constitution-making power itself, intended, as stated, to facilitate and strengthen its action, and not change its character. Though modified, it is not delegated. It still resides in the States, and is still to be exercised by them, and not by the Government.*

I propose next, to consider this important modification of the sovereign powers of the States, in connexion with the right of Nullification.

It is acknowledged, on all sides, that the duration and stability of our system depends on maintaining *the equilibrium* between the States and the General Government—the reserved and delegated powers. We know, that the Convention which formed the Constitution, and the various State Conventions which adopted it, as far as we are informed of their proceedings, felt the deepest solicitude on this point. They saw and felt there would be an incessant conflict between them, which would menace the existence of the system itself, unless properly guarded. The contest between the States and General Government—the reserved and delegated rights—will, in truth, be a conflict between the great predominant interests of the Union, on one side, controlling and directing the movements of the Government, and seeking to enlarge the delegated powers, and thereby advance their power and prosperity; and, on the other, the minor interests rallying on the reserved powers, as the only means of protecting themselves against the encroachment and oppression of the other. In such a contest, without the most effectual check, the stronger will absorb the weaker interests: while, on the other hand, without an adequate provision of some description, or other, the efforts of the weaker to guard against the encroachments of the stronger, might permanently derange the system.

On the side of the reserved powers, no check more effectual can be found, or desired, than Nullification, or the right of arresting, within the limits of a State, the exercise, by the General Government, of any powers, but the delegated—a right which (if the States be true to themselves, and faithful to the Constitution) will ever prove, on the side of the reserved powers, an effectual protection to both.

Nor is the check on the side of the delegated, less perfect. Though less strong it is an ample guard against encroachments; and is as strong as the nature of the system will bear, as will appear in the sequel. It is to be found in the amending power. Without the modification, which it contains of the rights of self-government, on the part of the States, as already explained, the consent of each State would have been requisite to any additional grant of power, or other amendment of the Constitution. While, then, Nullification would enable a State to arrest the exercise of a power not delegated, the right of self-government, if unmodified, would enable her to prevent the grant of a power not delegated; and, thus, her conception of what power ought to be granted, would be as conclusive, against the co-States, as her construction of the powers granted, is against the General Government. In that case, the danger would be on the side of the States, or reserved powers. The amending power, *in effect*, corrects this danger. In virtue of the provisions, which it contains, the resistance of a State, to a power cannot finally prevail, unless she be sustained by one fourth of the co-States; and, in the same degree, that her resistance is weakened, the power of the General Government, or the side of the delegated powers, is *strengthened*. It is true, that the right of a State to arrest an unconstitutional act is, of itself, complete against the Government; but it is equally so, that the controversy may *in effect*, be terminated against her, by a grant of the contested powers, by three fourths of the States. It is thus, by this simple, and apparently incidental contrivance the right of a State to nullify an unconstitutional act, so essential to the protection of the reserved rights, but which, unchecked, might too much debilitate the Govern-

ment, is counterpoised, not by weakening the energy of a State in her direct resistance to the encroachment of the Government, or by giving to the latter a direct control over the States, as proposed in the Convention, but in a manner infinitely more safe, and, if I may be permitted so to express myself, scientific, by strengthening the amending, or repairing power—the power of correcting all abuses or derangements by whatever cause, or from whatever quarter.

To sum all in a few words. The General Government has the right in the first instance of construing its own powers, which, if final and conclusive, as is supposed by many would have placed the reserved powers at the mercy of the delegated; and, thus, destroy the equilibrium of the system. Against that, a State has the right of Nullification. This right on the part of the State, if not counterpoised, might tend too strongly to weaken the General Government and derange the system. To correct this, the amending, or repairing power is strengthened. The former cannot be made too strong, if the latter be proportionably so. The increase of the latter is, in effect, the decrease of the former. Give to a majority of the States the right of amendment, and the arresting power, on the part of the State, would in fact be annulled. The amending power and the powers of the Government would, in that case, be, in reality, in the same hands. The same majority that controlled the one, would the other; and the power arrested, as not granted, would be immediately restored, in the shape of a grant. This modification of the right of self-government, on the part of the States, is, in fact, the pivot of the system. By shifting its position, as the preponderance is on the one side or the other, or, to drop the similie, by increasing, or diminishing the energy of the repairing power, effected by diminishing or increasing the number of States necessary to amend the Constitution, the equilibrium between the reserved and the delegated rights may be preserved, or destroyed at pleasure.

I am aware, it is objected, that according to this view, one fourth of the States may in reality change the Constitution, and, thus, take away powers, which have been unanimously granted by all the States. The objection is more specious than solid. The *right* of a State is not *to resume* delegated powers, but *to prevent* the reserved from being *assumed* by the Government. It is, however, certain, the right may be abused, and, thereby, powers be resumed, which were in fact delegated; and it is also true, if sustained by one fourth of the co-States, such resumption may be successfully and permanently made by the State. This is the danger; and the utmost extent of the danger, from the side of the reserved powers. It would, I acknowledge, be desirable to avoid or lessen it; but neither can be effected, without increasing a greater and imposing danger.

If the right be denied to the State to defend her reserved powers, for fear she might resume the delegated, that denial would, in effect, yield to the General Government the power, under the colour of construction, to assume, at pleasure, all the reserved powers. It is, in fact, a question between the danger of the States resuming the delegated powers, on one side, and the General Government assuming the reserved on the other. Passing over the far greater probability of the latter, than the former, which I endeavoured to illustrate in the Address of last summer, I shall confine my remarks to the striking difference between them, viewed in connection with the genius and theory of our Government.

The right of a State, originally, to complete self-government is a fundamental principle in our system, in virtue of which, *the grant of power required the consent of all the States, while to withhold power the dissent of a single State was sufficient.* It is true, that this original and absolute power of self-government has been modified by the Constitution, as already stated, so that three-fourths of the States may now grant power, and consequently it requires more than one fourth to withhold. The boundary between the reserved and the dele

gated powers marks the limits of the Union. The States are united to the extent of the latter and separated beyond that limit. It is, then, clear that it was not intended, that the States should be more united, than the will of one fourth of them, or rather one more than a fourth would permit. It is worthy of remark, that it was proposed in the Convention to increase the confederative power, as it may be called, by vesting two thirds of the States with the right of amendment; so as to require more than a third instead of a fourth, to withhold power. The proposition was rejected; and three-fourths unanimously adopted. It is, then, *more hostile to the nature of our system, to assume powers not delegated, than to resume those that are; and less hostile, that a State, sustained by one fourth of her co-States, should prevent the exercise of power really intended to be granted, than that the General Government should assume the exercise of powers not intended to be delegated.* In the latter case, the usurpation of power would be against the fundamental principle of our system, the original right of the States to self-government; while in the former, if it be usurpation at all, it would be, if so bold an expression may be used, an usurpation in the spirit of the Constitution itself—the spirit ordaining that the utmost extent of our Union should be limited by the will of any number of States, exceeding a fourth, and that most wisely. In a country having so great a diversity of geographical and political interests, with so vast a territory to be filled in a short time with almost countless millions,—a country, of which the parts will equal Empires,—an union, more intimate than that ordained in the Constitution, and so intimate, of course, that it might be permanently hostile to the feelings of more than a fourth of the States, instead of strengthening, would have exposed the system to certain destruction. There is a deep and profound philosophy, which he, who best knows our nature, will the most highly appreciate, that would make the intensity of the Union, if I may so express myself, inversely to the extent of territory and the population of a country, and the diversity of its interests geographical and political, and which would hold, in deeper dread, the assumption of reserved rights, by the agent appointed to execute the delegated, than the resumption of the delegated, by the authority which granted the powers and ordained the agent to administer them. There appears indeed, to be a great prevailing principle, that tends to place the delegated power in opposition to the delegating; the created to the creating power—reaching far beyond man and his works, up to the universal source of all power. The earliest pages of sacred history record the rebellion of the Archangels against the high authority of Heaven itself, and ancient mythology, the war of the Titans against Jupiter, which according to its narrative, menaced the universe with destruction. This all pervading principle is at work in our system—the created warring against the creating power, and unless the Government be bolted and chained down, with links of adamant, by the hands of the States which created it, the creature will usurp the place of the creator, and universal political idolatry overspread the land.

If the views presented be correct, it follows, that on the interposition of a State, in favour of the reserved rights, it would be the duty of the General Government to abandon the contested power, or to apply to the States themselves, the source of all political authority, for the power, in one, of the two modes prescribed in the Constitution. If the case be a simple one, embracing a single power, and that in its nature, easily adjusted, the more ready and appropriate mode, would be an amendment of the ordinary form, on a proposition of two-thirds of both houses of Congress, to be ratified by three-fourths of the States; but, on the contrary, should the derangement of the system be great, embracing many points difficult to adjust, the States ought to be convened in General Convention; the most august of all assemblies, representing the united sovereignty of the Confederated States, and having power and authority to correct every error, and to repair every dilapidation or injury, whether caused by time or accident, or the conflicting movement of the bodies, which com-

pose the system. With institutions every way so fortunate, possessed of means so well calculated to prevent disorders, and so admirable to correct them, when they cannot be prevented, *he* who would prescribe for our political disease, *disunion*, on the one side, or *coercion* of *a State*, in the assertion of its rights, on the other, *would deserve*, and *will receive the execrations* of *this and all future generations*.

I have now finished what I had to say on the subject of this communication, in its immediate connection with the Constitution. In the discussion, I have advanced nothing but on the authority of the Constitution itself, or that of recorded unquestionable facts, connected with the history of its origin and formation; and have made no deduction, but such as rested on principles, which I believe to be unquestionable; but it would be idle to expect, in the present state of the public mind, a favorable reception of the conclusions, to which I have been carried. There are too many misconceptions to encounter, too many prejudices to combat, and above all, too great a weight of interest to resist. I do not propose to investigate these great impediments to the reception of the truth, though it would be an interesting subject of inquiry to trace them to their cause, and to measure the force of their impeding power; but there is one among them of so marked a character, and which operates so extensively, that I cannot conclude without making it the subject of a few remarks, particularly as they will be calculated to throw much light, on what has already been said.

Of all the impediments, opposed to a just conception, of the nature of our political system, the impression, that the right of a State to arrest an unconstitutional act of the General Government is inconsistent with the great and fundamental principle of all free States, that a majority has a right to govern, is the greatest. Thus regarded Nullification is, without further reflection, denounced as the most dangerous and monstrous of all political heresies, as in truth it would be, were the objection, as well founded, as, in fact, it is destitute of all foundation, as I shall now proceed to shew.

Those who make the objection seem to suppose that the right of a majority to govern, is a principle too simple to admit of any distinction; and yet, if I do not mistake, it is susceptible of the most important distinction—entering deeply into the construction of our system, and, I may add, into that of all free States, in proportion to the perfection of their institutions, and is essential to the very existence of liberty.

When, then, it is said, that a majority has the right to govern, there are two modes of estimating the majority, to either of which the expression is applicable. The one, in which the whole community is regarded in the aggregate, and the majority is estimated in reference to the entire mass. This may be called the majority of the whole, or the absolute majority. The other, in which it is regarded in reference to its political interests, whether composed of different classes, of different communities, formed into one general confederated community, and in which the majority is estimated, not in reference to the whole, but to each class or community of which it is composed, the assent of each, taken separately, and the concurrence of all constituting the majority. A majority, thus estimated, may be called the concurring majority.

When it is objected to Nullification, that it is opposed to the principle, that a majority ought to govern, he who makes the objection must mean the absolute, as distinguished from the concurring. It is only in the sense of the former the objection can be applied. In that of the concurring, it would be absurd, as the concurring assent of all the parts (with us, the States) is of the very essence of such majority. Again—it is manifest, that in the sense it would be good against Nullification, it would be equally so against the Constitution itself; for, in whatever light that instrument may be regarded, it is clearly not the work of the absolute, but of the concurring majority. It was formed and ratified by the concurring assent of all the States, and not by the majority

of the whole taken in the aggregate, as has been already stated. Thus the acknowledged right of each State *in reference to the Constitution* is unquestionably the same right which Nullification attributes to each, *in reference to the unconstitutional acts of the Government;* and, if the latter be opposed to the right of a majority to govern, the former is equally so. I go farther. The objection might, with equal truth, be applied to all free States that have ever existed; I mean States deserving the name, and excluding, of course, those which after a factious and anarchial existence of a few years have sunk under the yoke of tyranny, or the dominion of some foreign power. There is not, with this exception, a single free State whose institutions are not based on the principle of the concurring majority—not one, in which the community was not regarded in reference to its different political interests, and which did not, in some form or other, take the assent of each in the operation of the Government.

In support of this assertion, I might begin with our own Government and go back to that of Sparta, and show, conclusively, that there is not one on the list, whose institutions were not organized on the principle of the concurring majority, and, in the operation of which, the sense of each great interest was not separately consulted. The various devices, which have been contrived for this purpose, with the peculiar operation of each, would be a curious and highly important subject of investigation. I can only allude to some of the most prominent.

The principle of the concurring majority has sometimes been incorporated in the regular and ordinary operation of the Government, each interest having a distinct organization, and a combination of the whole forming the Government; but still requiring the consent of each, within its proper sphere, to give validity to the measures of Government. Of this modification, the British and Spartan Governments are, by far, the most memorable and perfect examples. In others, the right of acting—of making and executing the laws—was vested in one interest, and the right of arresting, or Nullifying, in another. Of this description the Roman Government is much the most striking instance. In others, the right of originating or introducing projects of laws, was in one, and of enacting them, in another, as at Athens, where the Areopagus proposed and the General Assembly of the people enacted laws.

These devices were all resorted to, with the intention of consulting the separate interests, of which the several communities were composed: and against all of which, the objection to Nullification, that it is opposed to the will of a majority, could be raised with equal force—as strongly, and, I may say, much more so, against the unlimited, unqualified, and uncontrolable veto of a single tribune, out of ten, at Rome, on all laws and the execution of laws, as against the same right of a sovereign State (one of the twenty-four tribunes of this Union) limited, as the right is, to the unconstitutional acts of the General Government, and liable, as in effect it is, to be controlled by three-fourths of the co-States; and yet the Roman Republic, and the other States to which I have referred, are the renowned among free States, whose examples have diffused the spirit of liberty over the world, and which, if struck from the list, would leave behind but little to be admired or imitated. There indeed would remain one class deserving from us particular notice, as ours belong to it; I mean Confederacies—but as a class, heretofore far less distinguished for power and prosperity, than those already alluded to—though, I trust, with the improvements we have made, destined to be placed at the very head of the illustrious list of States, which have blessed the world with examples of well regulated liberty; and which stand, as so many oases in the midst of the desert of oppression and despotism which occupy so vast a space in the chart of Governments. That such will be the great and glorious destiny of our system, I feel assured—provided we do not permit our Government to degen-

stowing no honors, exercising no patronage, having neither the faculty to reward, nor to punish, but endowed, simply, with the attribute to grant powers and ordain the authority to execute them. The result is inevitable. With so strong an instinct on the part of the Government, to throw off the restrictions of the Constitution, and to enlarge its powers; and with such powerful faculties to gratify this instinctive impulse, the law-making, must necessarily encroach on the Constitution-making power, unless restrained by the most efficient check; at least, as strong as that for which we contend. It is worthy of remark, that all other circumstances being equal, the more dissimilar the interests represented by the two, the more powerful will be this tendency to encroach; and it is from this among other causes, that it is so much stronger between the Government and the Constitution-making powers of the Union, where the interest are so very dissimilar, than between the two in the several States

That the framers of the Constitution were aware of the danger, which I have described, we have conclusive proof, in the provision to which I have so frequently alluded. I mean that which provides for amendments to the Constitution.

I have already remarked on that portion of this provision, which with the view of strengthening the confederated power, conceded to three fourths of the States a right to amend, which otherwise could only have been exercised by the unanimous consent of all. It is remarkable, that while this provision thus strengthened the amending power, as it regards the States, it imposed impediments on it, as far as the Government was concerned. The power of acting as a general rule is invested in the majority of Congress, but instead of permitting a majority to propose amendments, the provission requires, for that purpose, two thirds of both houses, clearly with a view of interposing a barrier, against the strong instictive appetite of the Government for the acquisition of power. But it would have been folly, in the extreme, thus carefully to guard the passage to the direct acquisition, had the wide door of construction been left open to its indirect; and, hence, in the same spirit in which two thirds of both houses were required to propose amendments, the Convention that framed the Constitution, rejected the many propositions, which were moved in the body, with the intention of divesting the States of the right of interposing, and thereby of the only effectual means of preventing the enlargement of the powers of the Government by construction.

It is thus that the constitution-making power has fortified itself against the law-making; and that so effectually, that however strong the disposition and capacity of the latter to encroach, the means of resistance, on the part of the former, is not less powerful. If, indeed, encroachments have been made, the fault is not in the system, but in the inattention and neglect of those whose interest and duty it was, to interpose the ample means of protection afforded by the Constitution.

To sum up in a few words, in conclusion, what appears to me to be the entire philosophy of Government, in reference to the subject of this communication.

Two powers are necessary to the existence and preservation of free states: a power on the part of the ruled to prevent rulers from abusing their authority, by compelling them to be faithful to their constituents, and which is effected through the right of suffrage; and a power to COMPEL THE PARTS OF SOCIETY TO BE JUST TO ONE ANOTHER, BY COMPELLING THEM TO CONSULT THE INTEREST OF EACH OTHER, which can only be effected, whatever may be the device for the purpose, by requiring the concurring assent of all the great and distinct interests of the community to the measures of the Government. This result, is the sum total of all the contrivances adopted by free States to preserve their liberty, by preventing the conflicts between the several classes, or parts of the

community. Both powers are indispensable. The one as much so as the other. The rulers are not more disposed to encroach on the ruled, than the different interests of the community on one another; nor would they more certainly convert their power from the just and legitimate objects for which governments are instituted, into an instrument of aggrandizement, at the expense of the ruled, unless made responsible to their constituents, than would the stronger interest theirs, at the expense of the weaker, unless compelled to consult them in the measures of the Government, by taking their separate and concurring assent. The same cause operates in both cases. The constitution of our nature, which would impel the rulers to oppress the ruled, unless prevented, would, in like manner, and with equal force, impel the stronger to oppress the weaker interest. To vest the right of government in the absolute majority, would be, in fact, BUT TO EMBODY THE WILL OF THE STRONGER INTEREST IN THE OPERATIONS OF THE GOVERNMENT, AND NOT THE WILL OF THE WHOLE COMMUNITY, AND TO LEAVE THE OTHERS UNPROTECTED, A PREY TO ITS AMBITION AND CUPIDITY, just as would be the case, between rulers and ruled, if the right to govern was vested exclusively in the hands of the former. They would both be, in reality, absolute and despotic governments; the one as much so as the other.

They would both become mere instruments of cupidity and ambition, in the hands of those, who wielded them. No one doubts, that such would be the case, were the government placed under the control of irresponsible rulers; but, unfortunately for the cause of liberty, it is not seen, with equal clearness, that it must as necessarily be so, when controlled by an absolute majority; and yet, the former is not more certain, than the latter. To this, we may attribute the mistake so often and so fatally repeated, that to expel a despot is to establish liberty—a mistake to which we may trace the failure of many noble and generous efforts in favor of liberty. The error consists, in considering communities, as formed of interests strictly identical throughout, instead of being composed, as they in reality are, of as many distinct interests as there are individuals. The interests of no two persons are the same, regarded in reference to each other; though they may be, viewed in relation to the rest of the community. It is this diversity, which the several portions of the community bear to each other, in reference to the whole, that renders the principle of the concurring majority necessary to preserve liberty. Place the power in the hands of the absolute majority, and the strongest of these would certainly pervert the government from the object for which it was instituted, the equal protection of the rights of all, into an instrument of advancing itself, at the expense of the rest of the community. Against this abuse of power no remedy can be devised, but that of the concurring majority. Neither the right of suffrage, nor public opinion can possibly check it They in fact, but tend to aggravate the disease. It seems really surprising, that truths so obvious should be so imperfectly understood. There would appear, indeed, a feebleness in our intellectual powers on political subjects, when directed to large masses. We readily see, why a single individual, as a ruler, would, if not prevented, oppress the rest of the community, but are at a loss to understand, why seven millions would, if not also prevented, oppress six millions, as if the relative numbers on either side could, in the least degree, vary the principle.

In stating what I have, I have but repeated the experience of ages, comprehending all free governments preceding ours, and ours as far as it has progressed. The practical operation of ours has been substantially on the principle of the absolute majority. We have acted, with some exceptions, as if

the General Government had the right to interpret its own powers, without limitation, or check; and tho' many circumstances, have favoured us, and greatly impeded the natural progress of events, under such an operation of the system, yet we already see, in whatever direction we turn our eyes, the growing symptoms of disorder and decay—the growth of faction, cupidity and corruption; and the decay of patriotism, integrity and disinterestedness. In the midst of youth, we see the flushed cheek and the short and feverish breath, that mark the approach of the fatal hour; and come it will, unless there be a speedy and radical change—a return to the great conservative principle, which brought the Republican party into authority, but which, with the possession of power and prosperity, it has long since ceased to remember.

I have now finished the task, which your request imposed. If I have been so fortunate, as to add to your fund, a single new illustration of this great conservative principle of our Government, or to furnish an additional argument calculated to sustain the State in her noble and patriotic struggle to revive and maintain it, and, in which you have acted a part long to be remembered by the friends of freedom, I shall feel amply compensated for the time occupied, in so long a communication. I believe the cause to be, the cause of truth and justice, of Union, Liberty, and the Constitution, before which, the ordinary party struggles of the day, sink into perfect insignificance; and that it will be so regarded by the most distant posterity, I have not the slightest doubt.

With great, and sincere regard,
I am yours, &c. &c.
JOHN C. CALHOUN

His Ex. James Hamilton, Jun.
Governor of S. Carolina.

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[*Governor Hamilton to Hon. John C. Calhoun.*]

Pendleton Tuesday morning Sept 11. 1332.

My dear Sir.—On my return from Charleston last evening, I found your favor of the 28th ult. I embrace the earliest moment of making you my best acknowledgements for your obliging and most satisfactory compliance with the request I ventured to make you in my letter of the last month.

I have read your reply with intense interest, and have risen from its perusal with a vastly augmented confidence in the truth and importance of the doctrines we believe, and are ready to maintain.

You have added so much fresh and valuable matter, to your previous argument, that I am not so selfish or so little regardful of the obligations I owe to the great cause in which we are embarked, as to desire to keep your reply exclusively to myself, more especially at the present crisis, when the truths you have unfolded are calculated to shed so much light on the public mind, on a public question of inestimable interest. Permit me then, on my own responsibility, to make our correspondence public, in such a mode as I shall deem best.

I remain, my dear sir, with great esteem,
very respectfully and truly yours,
J. HAMILTON, Jun.

Hon. John C. Calhoun, V. P. of the U. S.

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[*Hon. John C. Calhoun to Governor Hamilton.*]

Fort Hill, Tuesday evening, 11th Sept. 1832.

My dear Sir.—I have received your note of this morning, requesting permission to publish my answer to your letter of the 31st July.

Taking as, I do, the deepest interest in the subject of the note, to which my communication is an answer, and solemnly believing, that the success of our great and novel experiment in Government depends on the success of the doctrines, for which we contend, I would not feel myself justified in withholding my assent to any measure, which you and our friends may think calculated to shed additional light on the great principles in controversy; and as it is your impression that the publication of my answer will have that effect, you are at liberty to make what disposition of it you may think proper.

My only fear is that your kind and partial feelings have over estimated the importance of the views, which I have presented. As to the responsibility, neccessarily incurred, in giving publicity to doctrines, which a large portion of the community will probably consider new and dangerous, I feel none. I have too deep a conviction of their truth, and their vital importance to the Constitution, the Union, and the Liberty of these States, to have the least uneasiness on that point. He but illy deserves the public confidence, who would shrink from the avowal of what he believes to be the truth, in such a case, be the consequence to him, personally, what they may.

With sincere regard and esteem, I am, &c.

JOHN C. CALHOUN.

His Ex. Gov. Hamilton.